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FILED
MAR 5 1958
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 47

ERIE RAILROAD COMPANY,
Appellant,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, THE STATE OF NEW JERSEY, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Appellees.

No. 55

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,
Appellant,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, THE STATE OF NEW JERSEY, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Appellees.

Civil Action

On Appeal from the United States District Court for the District of New Jersey

MOTION TO DISMISS APPEALS BECAUSE OF MOOTNESS AND TO VACATE THE JUDGMENT APPEALED FROM

CHARLES W. HUTCHINSON,
RAYMOND J. LAMB,
FREDERICK G. HOFFMANN,
Attorneys for Appellant, Erie Railroad Company,
1 Exchange Place,
Jersey City, New Jersey.

LEON LEIGHTON,
Attorney for Appellant, New York, Susquehanna and Western Railroad Company,
6 E. 45th Street,
New York 17, New York.

Adam Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12

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Petitioners* Erie and Susquehanna hereby respectfully move to dismiss the above entitled appeals in which they

* Throughout this petition we will refer to Erie Railroad Company as "Erie", New York, Susquehanna and Western Railroad Company as "Susquehanna", Interstate Commerce Commission as "Commission", State of New Jersey as "State", Board of Public Utility Commissioners of the State of New Jersey as "Board", United States District Court for the District of New Jersey as "District Court" and Trustee for New Jersey and New York Railroad Company as "Trustee".

are appellants and to vacate the judgment appealed from therein.

Erie, on February 10, 1956, filed an application with Commission for leave to abandon its passenger ferry service between Jersey City, New Jersey and New York City, New York pursuant to 49 U.S.C. Sec. 1(18). Subsequently applications were filed by Susquehanna and Trustee for abandonment of use under contract of said ferry line.

The matter was duly presented to and considered by the Commission and on June 26, 1957 Commission filed its report and issued an order and certificate authorizing abandonment of operation and use of said ferry from and after 30 days from the date of its order.

State and Board filed a complaint in the District Court, on August 9, 1957, to set aside Commission's order and certificate of public convenience and necessity. They also applied to the District Court and obtained an order for a preliminary injunction dated August 15, 1957. The case came on for hearing before three Judges sitting in the District Court and on December 10, 1957, that Court rendered its decision holding that the Commission had no jurisdiction under Section 1(18) of the Interstate Commerce Act (49 U.S.C. Sec. 1(18)) because a complete termination of Erie's passenger ferry operations would not constitute an abandonment of a line of railroad under Section 1(18) but would merely be a partial discontinuance of service over which Commission has no jurisdiction. *Board of Public Utility Commissioners of New Jersey* v. *United States, et al.*, 158 F. Supp. 98 (D. N. J. 1957).

A judgment was entered in the District Court on December 31, 1957 setting aside Commission's order and certificate of public convenience dated June 26, 1957.

Erie filed its notice of appeal in the District Court on February 18, 1958. Susquehanna filed its notice of appeal

in the District Court on February 28, 1958. This Court entered an order on June 16, 1958 noting probable jurisdiction in both cases. (357 U. S. 917, 2 L. Ed. 2d 1361, 78 S. C. 1358. #918 and #948)

Thereafter on August 12, 1958 the Transportation Act of 1958 became law (P.L. 85-625, 85th Cong. 72 Stat. 568, 49 U.S.C.).

On August 14, 1958 Erie and Susquehanna invoked the provisions of Section 13a(1) of said statute (49 U.S.C. 13a(1)) by filing notice with the Commission that the passenger ferry line operated between Erie passenger station at Jersey City, New Jersey and Chambers Street passenger station New York, New York (carrying passengers on the Northern Branch of the Erie Railroad, passengers of the New York, Susquehanna and Western Railroad and foot passengers) would be discontinued on September 14, 1958. Commission voted on August 25, 1958 not to conduct an investigation of said ferry abandonment. State and Board filed a complaint with Commission on August 25, 1958 which did not come to the attention of Commission before it voted at its meeting of August 25th. Thereafter, on September 2, 1958, Commission met again and after due deliberation, voted not to conduct a hearing or to otherwise interfere with the proposed Erie ferry discontinuance.

State and Board thereupon filed complaints in the District Court on September 4, 1958 wherein they sought judgment declaring that Section 13a(1) of the Transportation Act was unconstitutional and holding that the Commission in refusing to institute an investigation, acted arbitrarily and unreasonably. The District Court entered an order on September 12th temporarily enjoining Erie and Susquehanna from discontinuing said ferry service.

The case came on for hearing before three Judges sitting in the District Court on November 3, 1958. The Court (one

Judge dissenting) filed its opinion on November 25, 1958 holding Section 13a(1) of the Transportation Act constitutional and dismissing the complaint. A final judgment dismissing the complaint on the merits and dissolving the preliminary injunction was entered on December 4, 1958 with the provision that it "shall be effective as of 12:05 A.M. December 13, 1958."

On December 3, 1958, State and Board moved for a stay of the judgment pending appeal to the United States Supreme Court or in the alternative, for a stay pending application for a stay pending appeal to the United States Supreme Court to a Justice of the United States Supreme Court and the Court (one Judge dissenting) denied the motion for a stay but granted the motion for a stay of the judgment pending application for a stay to a Justice of the United States Supreme Court, said stay to expire automatically and without further action of the Court at 12:15 A.M. December 13, 1958.

State and Board did not apply to a Justice of the United States Supreme Court for a stay.

Erie discontinued the operation of its ferry between Jersey City and New York City on December 14, 1958. Susquehanna discontinued the use thereof on the same day.

State and Board had 60 days from the date of the entry of judgment on December 4, 1958 within which to file their appeal to this Court from the judgment of the District Court. Said 60 days expired on the 2nd day of February, 1959.

Neither State nor Board filed a notice of appeal from the judgment of the District Court dated December 4, 1958 and therefore their right to appeal from said judgment has expired.

By reason of the discontinuance of Erie Ferry service the issues presented for decision by the above entitled appeals have become moot.

Erie and Susquehanna have heretofore tendered to the Clerk of this Court, under the provisions of Rule 60 of the rules of this Court, any fees and costs that may be due in each of the above entitled cases.

WHEREFORE, the undersigned respectfully move for an order dismissing the above entitled appeals and vacating the judgment appealed from in accordance with the usual practice of this Court in such cases. *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 95 L. Ed. 36, 71 S. C. 104 (1950).

Respectfully submitted,

CHARLES W. HUTCHINSON,
RAYMOND J. LAMB,
FREDERICK G. HOFFMANN,
Attorneys for Appellant, Erie Railroad Company.

LEON LEIGHTON,
Attorney for Appellant, New York, Susquehanna and Western Railroad Company.

Dated: March 1959.